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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,237	08/24/2001	Raul Victorino Nunes	8270	3412

27752 7590 11/18/2003

THE PROCTER & GAMBLE COMPANY
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EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/939,237	NUNES ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 October 2003*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 17-28 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by McAnalley (WO 98/06418).

The claims are rejected for the reasons of record cited in the last office action. Claim 17 has been amended to require two or more vitamins which are A, D or E. These vitamins are included under the heading vitamins and minerals found in the reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 17-27, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Celestial Seasonings Echinacea Complete care (CS) or Vitaminwater or Odwalla Introduces Glorious Morning in view of McAnalley (WO 98/06418) and also taken alone and Fuse et al.

The claims are rejected for the reasons of record cited in the last office and for these further reasons. The claims have been amended to further require two or more vitamins. However, McAnalley discloses that the composition contains vitamins and minerals. As vitamins are listed in the plural form, one or more of such can be used. The particular vitamins, A, D and E are certainly including under the heading "vitamins", since they are common vitamins. Therefore, it would have been obvious to use two or more vitamins in the claimed composition.

Claim 28 further requires the use of vitamins A and E. Nothing new or unobvious is seen in choosing two well known vitamins for their known function. It would have been within the skill of the ordinary worker to use particular vitamins, particularly as they are all disclosed by the reference to McAnalley. Therefore, it would have been obvious to choose particular vitamins for their known function as shown by the above combination of references.

ARGUMENTS

Applicant's arguments filed 10-6-03 have been fully considered but they are not persuasive.

Applicants argue that McAnalley fails to teach two or more vitamins. However, as applicants argue, it broadly teaches the use of vitamins and minerals. It does not require one vitamin, but says "vitamins". Also, applicants' claims are open, comprising claims, so that other vitamins can be found in the composition. No data has been provided that there is a problem with using only the claimed vitamins as opposed to all the vitamins.

Applicants argue that there is no motivation to combine the references. However, each reference is used for what it teaches. If it is known to use the claimed combination of vitamins and arabinogalactan (AB) in a capsule, and applicants are claiming beverages, and not stating any amounts in some claims, then no patentable distinction is seen between the two. In fact, applicants' specification discloses on page 25 that the compositions can contain from 0% to 99.999% water. No use of a "capsule" has been excluded. In addition, vitamins and minerals are well known to be found in beverages as the art discloses, and the art discloses specifically the use of vitamins and arabinogalactan together in a beverage. No exclusion of any vitamins is found, particularly in the McAnalley reference as to vitamins, which would not have worked, in the claimed composition.

Applicants argue that CS does not disclose their particular vitamins. However, it is now being used in a 103 rejection. The further references do not need to have been limited to particular vitamins, if such are taught, and as above, applicants have open-comprising type claims. Even if fat-soluble vitamins have unique solubility and stability issues, no further gums or emulsifiers are required as disclosed in the specification.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory

action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 11-13-03

H. Pratt
HELEN PRATT
PRIMARY EXAMINER